

1 IN THE DISTRICT COURT FOR CLEVELAND COUNTY
2 STATE OF OKLAHOMA
3 CASE NO. CJ-96-1499L (H)

5 THE STATE OF OKLAHOMA, et al.,
6 Plaintiffs,
7 vs.
8 R.J. REYNOLDS, et al.,
9 Defendants.

10 _____ /

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DEPOSITION OF DAVID GOERLITZ

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Monday, November 9, 1998
One East Broward Boulevard
Fort Lauderdale, Florida
12:11 - 2:41 p.m.

CERTIFIED COPY

INTERIM COURT REPORTING
(800) 308-DEPS (3376)

1 Appearances:

2

3 On Behalf of the Plaintiffs:

4

5 NESS, MOTLEY, LOADHOLT, RICHARDSON & POOLE
6 151 Meeting Street, Suite 600
7 Charleston, South Carolina 29401
8 (803) 720-9000
9 BY: JODI W. FLOWERS, ESQ.

10

11 On Behalf of the Defendant R.J. Reynolds
12 Tobacco Company:

13

14 JONES, DAY, REABIS AND POGUE
15 901 Lakeside Avenue
16 Cleveland, Ohio 44114
17 (216) 586-7208
18 BY: MICHAEL NIMS, ESQ.

19

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23 - - -

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25 I N D E X

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28

29 WITNESS: DIRECT CROSS REDIRECT RECROSS

30 DAVID GOERLITZ

31

32 By Ms. Nims 3

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1 P R O C E E D I N G S

2 - - -

4 DAVID GOERLITZ

5 being by the undersigned Notary Public first duly
6 sworn, responded as follows:

THE WITNESS: Yes, I do.

13:11:52 8 DIRECT EXAMINATION

9 BY MR. NIMS:

13:12:1210 Q Would you state your name for the record,
11 sir?

13:12:1412 A David Goerlitz.

13:12:1613 O And what is your current residence address?

13:12:1814 A [DELETED]

Now, Mr. Goerlitz, you've been deposed at

13.13.2816 least once before: is that correct?

13:13:3917 A That's correct, sir.

Q. And you understand that for a brief period

13-12-4019 of time I will be asking you some questions. And I

13:12:4220 would appreciate it if you would try hard to listen to
13:12:4621 my question and then try and answer the question that

13.13.5033 Task Can you do that?

13:13:5023 A Yes sir, I can.

13:12:5224 Q Good. Thank you. Have you been deposed any
13:12:5625 other time other than the one time that I'm aware of

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13:13:00 1 in August of 1997?

13:13:02 2 A One time, not relating to the tobacco issue.

13:13:08 3 Q Okay. And approximately when would that
13:13:10 4 have been?

13:13:10 5 A I would say five years ago, sir.

13:13:14 6 Q And just, in general, what was the nature of
13:13:16 7 the deposition?

13:13:16 8 A I was asked to give my testimony in a
13:13:22 9 lawsuit in a real estate firm where a woman had
13:13:26 10 fallen. And I came in as a fact witness since I
13:13:28 11 observed what happened.

13:13:30 12 Q Then the deposition that was taken of you in
13:13:34 13 Pennsylvania -- well, actually, I guess --

13:13:38 14 Yes, it was in Pennsylvania, Philadelphia,
13:13:42 15 taken of you in August 1997. That's the only time
13:13:46 16 you've been deposed in litigation involving tobacco
13:13:50 17 companies?

13:13:50 18 A Yes, sir.

13:13:50 19 Q Have you had an opportunity to review the
13:13:52 20 transcript of your deposition that was taken in
13:13:56 21 Philadelphia in August of last year?

13:13:58 22 A Yes, sir, I have.

13:13:58 23 Q And did you make any changes in the
13:14:04 24 transcription of that deposition after you read it?

13:14:08 25 A I don't follow what you mean, changes.

13:14:12 1 Q Sometimes -- and I don't know if this
13:14:14 2 happened or not. Sometimes the transcript is sent to
13:14:20 3 you, and you're asked to fill out an errata sheet if
13:14:22 4 you found anything in there that was in error. Did
13:14:26 5 that happen?

13:14:26 6 A No, sir.

13:14:28 7 MS. FLOWERS: For the record, we would like
13:14:30 8 to read and sign in this instance.

9 BY MR. NIMS:

13:14:3210 Q So when you reviewed the transcript of the
13:14:3611 deposition taken last year, it was just so you'd have
13:14:4012 an opportunity to see what you had said?

13:14:4413 A Yes, sir.

13:14:4414 Q As you're here today, do you have any
13:14:5015 recollection of when you read it wanting to change
13:14:5416 anything that you believed had been recorded
13:14:5817 inaccurately?

13:14:5818 A Just pronunciation of names, for example,
13:15:0419 instead of churner it was turner, minor little things
13:15:0820 like that.

13:15:0821 Q You didn't see any substantive change in the
13:15:1222 nature of your testimony that you felt needed to be
13:15:1423 made?

13:15:2024 A No, sir. May I ask a question?

13:15:2425 Q Certainly.

13:15:24 1 A Wasn't this supposed to be videotaped?
13:15:30 2 Q I think it was initially noticed to be
13:15:30 3 videotaped, but I suggested that they not videotape
13:15:36 4 it. I don't need to do that.

13:15:38 5 A Thank you.

13:15:38 6 MS. FLOWERS: Forgive me if I missed this
13:15:40 7 and he said that. Did he tell you when he read
13:15:44 8 his deposition?

13:15:46 9 MR. NIMS: No, he didn't.

10 BY MR. NIMS:

13:15:4811 Q Did you read your deposition shortly after
13:15:5012 it was taken?

13:15:5413 A I read the deposition approximately two
13:15:5414 months ago, sir.

13:15:5615 Q Two months ago. Okay. Do you know who
13:15:5816 provided you with a copy of your deposition?

13:16:0217 A The Ness, Motley, Lawton Law Firm.

13:16:0418 Q And when you got it two months ago, was that
13:16:1019 the first time you had ever seen it?

13:16:1020 A Yes, sir.

13:16:1021 Q The actual written transcript?

13:16:1422 A Yes, sir.

13:16:1423 Q Have you ever had an opportunity to sit down
13:16:1824 and -- well, strike that.

13:16:2025 Was that deposition videotaped?

13:16:24 1 A Yes, sir, it was.

13:16:24 2 Q And have you ever had an opportunity to sit

13:16:26 3 down and actually watch the videotape?

13:16:28 4 A No, sir.

13:16:30 5 Q By whom are you employed today?

13:16:40 6 A I'm self-employed, sir.

13:16:42 7 Q And do you have a company that you now run?

13:16:48 8 A I'm no longer incorporated. I'm a sole

13:16:52 9 proprietor.

13:16:52 10 Q And what is the nature of what you do

13:17:00 11 today? I'm aware of what you were doing as of

13:17:02 12 August of 1997. And I don't, you know, need to repeat

13:17:06 13 what you've already said in that deposition. But just

13:17:10 14 if you could tell me what you're doing today.

13:17:12 15 A Same as August of 1997 with the exception of

13:17:14 16 not being incorporated, I'm a tobacco educator for

13:17:18 17 children in elementary, middle and high school

13:17:24 18 involving quit-smoking programs, working with

13:17:28 19 nonprofit organizations who are trying to provide

13:17:30 20 information to young children on tobacco issues.

13:17:34 21 Q Is 100 percent of the employment

13:17:38 22 compensation that you receive today the result of your

13:17:42 23 educational activities respecting tobacco?

13:17:44 24 A No, sir.

13:17:46 25 Q So what else do you do that also results in

13:17:50 1 remuneration?

13:17:50 2 A I still get involved with acting, theater,
13:18:00 3 some drama coaching, but it's minimal.

13:18:02 4 Q So the principal source of your income
13:18:06 5 remains your educational activities respecting
6 tobacco?

13:18:10 7 A Yes, sir.

13:18:10 8 Q Have you been involved in any litigation
13:18:24 9 against a tobacco company since you were deposed in
13:18:24 10 August of last year up until today?

13:18:30 11 A Other than the first deposition?

13:18:32 12 MS. FLOWERS: I'm sorry. I just wanted to
13:18:34 13 object to the form because I think it may be
13:18:38 14 vague and ambiguous. Maybe I heard you
13:18:38 15 incorrectly. But involvement in, do you mean as
13:18:42 16 a plaintiff or as a consultant or in any
13:18:44 17 fashion?

13:18:48 18 MR. NIMS: Let me rephrase the question.

19 BY MR. NIMS:

13:18:48 20 Q When you were deposed in August of 1997 the
13:18:54 21 impetus for that deposition occurring was your
13:18:58 22 submission of an expert report in a case entitled
13:19:04 23 "Steven Arch First American Tobacco Company." Was
13:19:08 24 that your understanding as well?

13:19:10 25 A Yes, sir.

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12:19:10 1 Q Other than the Arch case in which you
13:19:16 2 submitted an expert report and you were deposed and
13:19:22 3 this case which brings you to Florida today for this
13:19:24 4 deposition, have you had discussions with attorneys
13:19:26 5 with respect to possible testimony in any other
13:19:30 6 tobacco case?

13:19:32 7 A I'm a little confused. But the best way I
13:19:38 8 can answer that was my congressional testimony in 1989
13:19:40 9 which I'm not sure if that's litigation or not, sir.

13:19:44 10 Q Okay.

13:19:46 11 A There were attorneys involved. So I would
13:19:48 12 have to answer, yes, I was.

13:19:50 13 Q And that occurred in 1989?

13:19:52 14 A Yes, sir.

13:19:54 15 Q What I'm most focussing on, and your answer
13:19:58 16 was obviously accurate, given the way I asked the
13:20:02 17 question. Since 1997 and the time you were deposed,
13:20:10 18 have you had discussions with any attorneys about
13:20:14 19 possible testimony in any case against a tobacco
13:20:16 20 company other than the State of Oklahoma which brings
13:20:20 21 you here today?

13:20:22 22 A Yes, sir.

13:20:22 23 Q And what other cases have you had
13:20:24 24 discussions about possible testimony in?

13:20:26 25 A The State of Missouri lawsuit scheduled for

13:20:30 1 trial in 2000, I believe.

13:20:34 2 Q Any others?

13:20:34 3 A No, sir.

13:20:54 4 Q Have you had discussions with any attorneys
13:20:56 5 about testifying in the State of Oklahoma's case?

13:21:02 6 A Yes, I have, sir.

13:21:04 7 Q And with whom have you had discussions about
13:21:06 8 testifying?

13:21:08 9 A Attorney Cherie Durand and her paralegal,
13:21:16 10 Colleen Hemelgarn, I believe.

13:21:16 11 Q And do you know what firm she works with?

13:21:18 12 A Yes, sir.

13:21:18 13 Q And what firm is that?

13:21:20 14 A Ness, Motley and Lawton.

13:21:22 15 MS. FLOWERS: Actually, excuse me. It's
13:21:24 16 Ness, Motley, Loadholt, Richardson & Poole.

13:21:28 17 THE WITNESS: I'm sorry.

13:21:30 18 MR. NIMS: Mr. Motley usually refers to it
13:21:32 19 as the Motley Crew.

13:21:34 20 THE WITNESS: Mr. Motley is probably turning
13:21:36 21 in his grave now. Sorry. No disrespect
13:21:40 22 intended.

23 BY MR. NIMS:

13:21:40 24 Q When did you first have discussions about
13:21:44 25 the possibility of testifying in the Oklahoma case?

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13:21:46 1 A It would have to be in August of this year.
13:22:02 2 Q And what was your understanding of the
13:22:06 3 request that you consider testifying, if there was a
13:22:06 4 request that you consider testifying?

13:22:10 5 A I was requested to tell my story, being the
13:22:18 6 former Winston man for R.J. Reynolds from 1981 to
13:22:20 7 1987, and what I saw, what I heard and what I was
13:22:24 8 expected to emulate being a Winston man.

13:22:28 9 Q Is it your understanding that that will be
13:22:36 10 the scope of your testimony that will be solely about
13:22:36 11 your experiences during the period of time that you
13:22:40 12 were involved in Winston advertising?

13:22:44 13 A Are you referring to strictly the Oklahoma
13:22:48 14 case, sir?

13:22:48 15 Q Yes.

13:22:50 16 A Yes, sir.

13:22:58 17 May I say something?

13:22:58 18 Q Yes.

13:23:00 19 A I neglected one other discussion I had with
13:23:02 20 an attorney in Texas in 1985 that I was asked to
13:23:08 21 testify in. And I refused.

13:23:10 22 Q Right. And there was testimony about the
13:23:16 23 possibility of your testifying in that case which I
13:23:20 24 believe was the Allgood case in your prior deposition
13:23:22 25 last year?

13:23:22 1 A As I recall. I just neglected this time.

13:23:26 2 Q That's fine.

13:23:26 3 MS. FLOWERS: Also, to clarify, I am an

13:23:28 4 attorney. And we have had conversations, however

13:23:32 5 recent.

6 BY MR. NIMS:

13:23:36 7 Q Is it your present intention to travel to

13:23:40 8 Oklahoma and testify during the trial of the State of

13:23:44 9 Oklahoma's case?

13:23:4610 A If asked, yes, sir.

13:23:4611 Q Is it your understanding that at least as of

13:23:5812 now you have been asked and they do want you to come

13:24:0013 to Oklahoma?

13:24:0214 A No, sir.

13:24:0415 Q You have no understanding or you have a

13:24:0616 different understanding than that?

13:24:0817 A No one has discussed me going to Oklahoma

13:24:1218 for trial, sir.

13:24:1819 Q When you were asked to appear for this

13:24:2420 deposition, what was your understanding of why this

13:24:2421 deposition was going to occur?

13:24:2622 A That I was going to be a fact witness and

13:24:3023 tell the events as I saw them from 1981 to 1987 under

13:24:3424 the employment of R.J. Reynolds.

13:24:5025 Q Do you have any understanding of the nature

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13:24:54 1 of the lawsuit in Oklahoma, what it's about?

13:25:00 2 A I believe I do, sir, yes.

13:25:00 3 Q And what understanding do you have about the
13:25:02 4 nature of that case?

13:25:04 5 A That they are looking for remuneration to
13:25:10 6 recompense for expenses paid in Medicare, Medicaid.

13:25:14 7 I'm not quite sure which one. Money will be made

13:25:20 8 available for prevention and education of children

13:25:26 9 becoming addicted to tobacco; that there will be

13:25:30 10 cessation and motivation programs made available to

13:25:38 11 teenagers who are currently addicted and would like to

13:25:38 12 quit smoking or chewing.

13:25:40 13 My understanding is that there will be funds
13:25:44 14 made available for new ordinances to make sure stores
13:25:54 15 are not breaking the law in selling cigarettes to
13:25:54 16 minors. As far as other specifics, I'd be guessing.

13:26:02 17 That's the basic overall knowledge I have of it.

13:26:06 18 Q Do you expect to receive any compensation
13:26:16 19 for your time for any testimony you give in Oklahoma?

13:26:18 20 A I would hope, so, yes, sir.

13:26:20 21 Q Have you had any discussions about the
13:26:22 22 nature of such compensation?

13:26:24 23 A No, sir.

13:26:32 24 Q What compensation would you hope to receive
13:26:36 25 if you do come to Oklahoma to testify?

13:26:40 1 A I really haven't thought about it, sir.

13:26:42 2 Q Would you expect to be paid for any time on

13:26:58 3 an hourly rate of some kind if you come to Oklahoma?

13:27:00 4 A I would expect so, yes, sir.

13:27:02 5 Q Do you have an hourly rate that you consider

13:27:24 6 kind of your standard hourly rate that you hope to get

13:27:24 7 when you're doing educational activities?

13:27:30 8 MS. FLOWERS: Excuse me. Object to the form

13:27:30 9 just because I was unclear if you're talking

13:27:32 10 about in the context of him testifying or in the

13:27:34 11 context of his educational activities.

13:27:42 12 MR. NIMS: You may answer.

13:27:44 13 THE WITNESS: Could you repeat the question,

13:27:46 14 sir?

15 BY MR. NIMS:

13:27:46 16 Q Sure. Do you have an hourly rate that you

13:27:50 17 regard as kind of your standard hourly rate when

13:27:50 18 you're involved in educational activities respecting

13:27:54 19 tobacco?

13:27:58 20 A Yes, I do, with exceptions.

13:28:02 21 Q And, first, why don't you tell me what you

13:28:06 22 regard your standard rate to be. And then we'll talk

13:28:08 23 about the exceptions.

13:28:08 24 A My standard rate for school programs would

13:28:12 25 be 250 dollars per hour. A full day workshop with

13:28:28 1 motivation programs could be up to 750 a day, morning
13:28:34 2 until evening. Public service announcements are
13:28:38 3 zero. I do an awful lot of pro bono work as well. So
13:28:42 4 it's difficult for me to generalize and capsulize
13:28:46 5 everything, sir.

13:28:50 6 Q And just to make sure that I understand
13:28:56 7 correctly, at least at this point, you've had no
13:29:00 8 discussions with attorneys for the State of Oklahoma
13:29:02 9 about what compensation you might receive if you do
13:29:06 10 come to trial and testify in that case?

13:29:08 11 A That is correct, I have not.

13:29:28 12 THE WITNESS: May I clarify something?

13:29:30 13 MR. NIMS: Any time you feel you ought to
13:29:34 14 say something more to be accurate to something
13:29:36 15 you've already said, feel free to do so.

13:29:38 16 THE WITNESS: I'm a little naive here. But
13:29:40 17 am I expected to go to Oklahoma? Is that what
13:29:42 18 you're telling me, that because I'm here I will
13:29:44 19 be in Oklahoma, as you implied earlier, that I
13:29:48 20 should have known that?

13:29:50 21 MS. FLOWERS: May I answer that?

13:29:50 22 MR. NIMS: You may.

13:29:52 23 THE WITNESS: Please.

13:29:52 24 MS. FLOWERS: I believe it's a judgment call
13:29:54 25 that will probably be made by trial counsel at

13:29:56 1 some point. We certainly would never have listed
13:30:00 2 you as a witness if we didn't hope to bring you
13:30:02 3 to Oklahoma. This deposition will become part of
13:30:08 4 the record of that case. Does that answer your
13:30:10 5 question?

13:30:10 6 THE WITNESS: No.

13:30:12 7 MS. FLOWERS: Perhaps we could discuss it
13:30:16 8 off the record later, if you like.

13:30:16 9 THE WITNESS: I'm just confused because I
13:30:18 10 was listening to you. And you assumed that I was
13:30:22 11 going to Oklahoma as I think I assume, but I
13:30:24 12 wasn't sure how the legalities work. So I was
13:30:28 13 just trying to clarify.

13:30:30 14 MR. NIMS: So it's clear, I represent
15 R.J. Reynolds Tobacco Company. It would not be
13:30:38 16 my intention to try and get you to come to
13:30:46 17 Oklahoma. If somebody wants you to come to
13:30:46 18 Oklahoma, it will be the people who represent the
13:30:50 19 State of Oklahoma with whom you've had
13:30:52 20 discussions.

13:30:54 21 THE WITNESS: I see now.

13:30:54 22 MR. NIMS: And that decision will presumably
13:30:56 23 be made at a later date. But I, representing
13:31:00 24 R.J. Reynolds Tobacco Company, am just trying to
13:31:02 25 find out in this deposition what the expectation

13:31:06 1 presently is about whether you'll come and if you
13:31:08 2 know. I think you've answered the questions.

13:31:12 3 MS. FLOWERS: I can state for the record
13:31:14 4 that my understanding, the intention is to bring
13:31:16 5 David to trial if he's available to come.

13:31:20 6 THE WITNESS: I'm clear now. Thank you.

7 BY MR. NIMS:

13:31:34 8 Q I'm going to go through very briefly, I
13:31:38 9 hope, some of the allegations in the Oklahoma
13:31:44 10 complaint to determine, I hope, that on most of them
13:31:52 11 you don't believe you have knowledge on those aspects,
13:31:54 12 that you would have knowledge only on ones having to
13:31:58 13 do with advertising.

13:32:00 14 MS. FLOWERS: Michael, I have a copy if you
13:32:02 15 want me to have it for the witness for ease of
13:32:06 16 reference.

13:32:06 17 MR. NIMS: Sure. That would be great if you
13:32:08 18 could put it in front of him. I won't mark it
13:32:10 19 unless you want me to.

13:32:12 20 THE WITNESS: Excuse me. May I take off my
13:32:14 21 jacket?

13:32:14 22 MR. NIMS: Absolutely.

13:32:26 23 MS. FLOWERS: Is this what you have?

13:32:28 24 MR. NIMS: Yes.

25 BY MR. NIMS:

13:32:34 1 Q Mr. Goerlitz, counsel has placed in front of
13:32:38 2 you a copy of the complaint in the Oklahoma action.
13:32:42 3 Have you ever had an opportunity to review that entire
13:32:46 4 complaint?

13:32:46 5 A Yes, sir.

13:32:50 6 Q And when was that?

13:32:50 7 A Today.

13:32:56 8 Q If you could look at paragraph 1 of the
13:33:08 9 complaint, that should be after you get past the
13:33:0810 caption.

13:33:1011 A Okay.

13:33:1212 Q If you could just quickly read that
13:33:5413 paragraph to yourself. During the period of time that
13:33:5614 you were involved in advertising for Winston, did you
13:34:0415 have any discussions with anyone you believed to be
13:34:0416 employed by a tobacco company that you believe are
13:34:1017 relevant to the allegations in that paragraph?

13:34:1018 A Yes.

13:34:1219 MS. FLOWERS: One moment. I just wanted to
13:34:1620 lodge an objection to the form.

13:34:1621 THE WITNESS: Yes, sir.

22 BY MR. NIMS:

13:34:1823 Q And could you tell me what discussions you
13:34:2424 had that you believe are relevant to the allegations
13:34:2425 of paragraph 1.

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13:34:26 1 A The misconduct of the tobacco industry, as I
13:34:36 2 recall, in confusing not only smokers but new would-be
13:34:40 3 smokers causes me to believe that the tobacco industry
13:34:50 4 was very negligible when it came to telling the truth
13:34:56 5 about their product, causing so much disease in the
13:35:00 6 smokers.

13:35:02 7 Q Did any one who you believed to be employed
13:35:08 8 by a tobacco company ever tell you that they were
13:35:14 9 aware that the company was lying about any aspect of
13:35:18 10 its product?

13:35:18 11 A Yes, sir.

13:35:18 12 Q And who do you believe told you that?

13:35:22 13 A Dale Zane.

13:35:26 14 Q During your deposition in 1997 there was
13:35:34 15 much testimony, and I won't go through it all, about
13:35:42 16 whether it was Dale Zane or Zane Dale (phonetic) or
13:35:46 17 whether that was the real name. Do you have any
13:35:52 18 information today that sheds any additional light on
13:35:54 19 that question beyond what you testified to in your
13:35:56 20 deposition August of 1997?

13:36:00 21 A No, sir.

13:36:00 22 Q What position do you believe that -- strike
13:36:14 23 that.

13:36:16 24 What name did you use a minute ago? Was it
13:36:22 25 Dale Zane?

13:36:24 1 A As I recall, it was Dale Zane, yes, sir.

13:36:28 2 Q What position do you believe that Dale Zane

13:36:30 3 held at a tobacco company?

13:36:32 4 A As I recall, he was introduced as marketing

13:36:36 5 director.

13:36:40 6 Q And this would have been of R.J. Reynolds

13:36:42 7 Tobacco Company as you understood it?

13:36:44 8 A Yes, sir.

13:36:56 9 Q And when were you first, as you recall,

13:36:58 10 introduced to this gentleman?

13:37:04 11 A My memory sixteen years ago is a little off,

13:37:16 12 but I'm sure it was 1981, May or June of 1981, sir.

13:37:22 13 Around that time frame.

13:37:22 14 Q Do you recall who introduced you to this

13:37:26 15 gentleman?

13:37:26 16 A Larry Wassom (phonetic).

13:37:34 17 Q And he was with Esty?

13:37:36 18 A William Esty Advertising, yes, sir.

13:37:40 19 Q Was anyone else present when you were

13:37:50 20 introduced to this gentleman that you can recall?

13:37:54 21 A I believe there were several people present.

13:37:58 22 Q Do you remember who any of them were?

13:37:58 23 A Yes, sir.

13:38:00 24 Q And who were they?

13:38:00 25 A Corbin Bernsen, Billy Kendall, John Neil,

13:38:18 1 Michael Rynhardt, Cortland Litz, Rick Wiltz, and I
13:38:26 2 believe Amele Dospenso (phonetic).

13:38:28 3 Q And where was this group of people assembled
13:38:34 4 when you were introduced to this gentleman?

13:38:38 5 A Mount Evans, Colorado.

13:38:50 6 Q I asked you a few questions back about
13:39:02 7 whether you had ever had a conversation in which you
13:39:08 8 believe somebody employed by a tobacco company
13:39:14 9 indicated that they had knowledge that a tobacco
13:39:16 10 company was lying about its product. And you
13:39:20 11 mentioned yes and Dale Zane.

13:39:22 12 Did the conversation to which you made
13:39:26 13 reference occur at this particular session in
13:39:30 14 Mount Evans, Colorado, or did it occur at some other
13:39:34 15 time?

13:39:34 16 A I'm confused, sir. The meeting?

13:39:38 17 Q Right. Let me see if I can clarify. You've
13:39:42 18 indicated that you believe you first met this
13:39:46 19 gentleman that you believe was named Dale Zane at a
13:39:54 20 time when there was a group of people that you've
13:39:56 21 identified assembled at Mount Evans, Colorado; is that
22 correct?

13:40:00 23 A That is correct.

13:40:00 24 Q Was it on this that occasion that Mr. Zane
13:40:08 25 said something that you believe indicated he believed

13:40:10 1 a tobacco company lied about something about its
13:40:14 2 product?

13:40:14 3 A No, sir.

13:40:14 4 MS. FLOWERS: Object to the form of the
13:40:16 5 question.

6 BY MR. NIMS:

13:40:16 7 Q So the conversation in which that happened
13:40:18 8 was some other time?

13:40:20 9 A Yes, sir.

13:40:28 10 Q Okay. This first time that you met the
13:40:30 11 gentleman you believed was Mr. Zane, what do you
13:40:36 12 recall his saying, if anything?

13:40:38 13 A Brief, very congratulatory, grateful that
13:40:52 14 they had a new campaign that was going to sell more
13:40:54 15 product, very cordial.

13:41:10 16 Q The session in Mount Evans, Colorado, were
13:41:14 17 you out there to do some shooting of an ad?

13:41:18 18 A Yes, sir.

13:41:20 19 Q Would this have been the first ad that you
13:41:22 20 had ever done for Winston?

13:41:24 21 A Yes, sir.

13:41:24 22 Q The other people that you've identified in
13:41:38 23 the group, did some of them appear to already know
13:41:42 24 this gentleman, Mr. Zane, other than Larry Wassom who
13:41:46 25 introduced him to you?

13:41:48 1 A Yes, sir.

13:41:50 2 Q Which ones do you believe already knew him?

13:41:50 3 A To the best of my recollection, John Neil,

13:41:58 4 Amele Dospenso, and Michael Rynhardt.

13:42:06 5 Q And who was John Neil?

13:42:08 6 A Our director -- I beg your pardon. Ad

13:42:12 7 executive with Larry Wassom.

13:42:16 8 Q So you understood him to be an employee of

13:42:18 9 the advertising agency?

13:42:20 10 A Yes, sir.

13:42:20 11 Q And who was -- I may get this wrong because

13:42:26 12 I wrote it down fast -- Dospenso?

13:42:34 13 A Amele Dospenso.

13:42:34 14 Q And who he was he?

13:42:36 15 A Art director for William Esty.

13:42:38 16 Q And who was Michael Rynhardt?

13:42:40 17 A Photographer.

13:42:54 18 Q Were some of the people that were in this

13:42:58 19 group that you have identified models for ads,

13:43:02 20 basically people who had the same role you did?

13:43:04 21 A Yes, sir.

13:43:06 22 Q Did you have any impression of whether any

13:43:08 23 of them had ever met this gentleman, Dale Zane,

13:43:14 24 before?

13:43:14 25 A I don't recall.

12:43:22 1 Q Have you told me all you can recall of this
13:43:26 2 first time you met Mr. Zane or anything you recall his
13:43:28 3 saying?

13:43:30 4 MS. FLOWERS: Object to the form. I think
13:43:34 5 it's overly broad. But I may misunderstand the
13:43:40 6 number of meetings that they had.

13:43:44 7 THE WITNESS: Lots was said. Could you
13:43:46 8 repeat the question, sir?

9 BY MR. NIMS:

13:43:5010 Q Yes. You can appreciate -- you've been
13:43:5211 through a deposition before. You can appreciate that
13:43:5412 the purpose for why I am here is to make sure I
13:44:0413 understand the facts that you might testify to. And I
13:44:0614 just want to be sure as best you can tell me
13:44:1015 everything you recall this gentleman, Dale Zane,
13:44:1416 having said on this occasion when you first met him in
13:44:1817 Mount Evans, Colorado.

13:44:2018 A There was other things that were said, yes,
19 sir.

13:44:2620 Q Okay. Can you recall any of them?

13:44:2821 A He did not like the helicopter. He
13:44:3422 expressed dissatisfaction with the color of the
13:44:4223 helicopter. I recall him saying that the lighting was
13:44:4824 too bright at that particular time of day. I recall
13:44:5425 this person wishing the camera faced another angle to

13:45:00 1 the canyon. Other than that, it's very general
13:45:04 2 conversation from what I believe to have been his
13:45:12 3 dictating to the ad executives what he was looking for
13:45:12 4 on behalf of R.J. Reynolds of which we complied and
13:45:16 5 did the changes.

13:45:20 6 So to answer your question, there was a lot
13:45:22 7 said while we were in that midst of the grouping. So
13:45:26 8 I don't want you to believe that he only said hello,
13:45:28 9 cordials, and congratulations to the new Winston team.

13:45:40 10 Q Was there anybody else there, besides him,
13:45:44 11 who you believed to be an employee of R.J. Reynolds
13:45:46 12 Tobacco Company?

13:45:48 13 A Not that I'm aware of, sir, no.

13:46:00 14 Q You indicated a while back, a few questions
13:46:06 15 back, that at some point you had a conversation with
13:46:06 16 Mr. Zane in which you believe he said something that
13:46:16 17 indicated he believed the company lied in some fashion
13:46:20 18 about its product. When did the conversation that you
13:46:24 19 have in mind occur?

13:46:26 20 A Later that afternoon on the same day that I
13:46:30 21 met him but much later that day.

13:46:36 22 Q Would you tell me as best you can everything
13:46:38 23 you recall his having said later that day.

13:46:46 24 A I had to be on oxygen for a good part of the
13:46:52 25 day because of the altitude of Mount Evans. They were

13:46:56 1 laughing at the fact that I was walking around
13:47:02 2 disconnecting my oxygen mask so I could smoke. I
13:47:08 3 commented to him that I see none of you from the ad
13:47:12 4 agency or R.J. Reynolds smoking. I said, Why?

13:47:22 5 Dale Zane looked at me and said, We don't
13:47:24 6 smoke the shit. We just sell it. We reserve the
13:47:30 7 right to smoke for the young, the poor, the black and
13:47:32 8 the stupid.

13:47:44 9 Q Do you recall his saying anything else at
13:47:46 10 that time?

13:47:54 11 A Something to the nature that nobody should
13:47:54 12 be smoking, but it was not directed to me because of
13:48:02 13 the oxygen. Something -- and I could be wrong in my
13:48:08 14 recollection, if it came from him or Amele Dospenso
13:48:16 15 because at that point we were no longer allowed to
13:48:22 16 smoke while hooked up to oxygen.

13:48:22 17 Q And I take it the reason you were taking
13:48:28 18 oxygen was it must have been because of the altitude
13:48:34 19 of Mount Evans Colorado?

13:48:36 20 A As I believe it to be, yes.

13:48:38 21 Q You were up in the mountains, I take it?

13:48:40 22 A Plus being a heavy smoker and being at the
13:48:44 23 altitude that I was.

13:48:44 24 Q I mean, somebody had brought oxygen along.
13:48:48 25 I assume that you hadn't requested that they bring

13:48:50 1 oxygen?

13:48:52 2 A I did not request it, no.

13:48:52 3 Q Can you recall anything else that you
13:49:06 4 believe Mr. Zane said on that day?

13:49:12 5 A He also said that it was our job to find new
13:49:14 6 smokers.

13:49:24 7 Q Anything else?

13:49:24 8 A This campaign looked as if it was going to
13:49:28 9 do the job. Other things were said. But I'm not sure
13:49:4210 if they came --

13:49:4211 They came from someone who had hired me.

13:49:4412 But I'm not sure if they were directives of his or the
13:49:4813 art director or the executive. So at this point,
13:49:5214 that's pretty much all that I believe he had said to
13:49:5415 me directly, as far as I recall.

13:50:0216 Q Regardless of to whom he may have been
13:50:0217 directing the comment, do you remember anything else
13:50:0618 that you believe he said which you heard on that day?

13:50:1419 A I believe that's all he said, to the best of
13:50:1620 my ability.

13:50:3621 Q Did anybody say anything in response to the
13:50:3822 comment he made about smoking being for the young, the
13:50:4223 poor, the black and the stupid?

13:50:4424 A They all laughed.

13:50:4625 Q Did Mr. Zane say anything else that you

13:51:54 1 believe indicated in some way that he believed that
13:51:54 2 R.J. Reynolds lied about its product?

13:52:02 3 A Other than referring to his product as shit,
13:52:04 4 no.

13:52:08 5 Pardon me.

13:52:08 6 Q Did you ever meet anyone you understood to
13:52:20 7 be employed by R.J. Reynolds who smoked R.J. Reynolds
13:52:26 8 products?

13:52:26 9 A I believe I met a gentleman in Utah who was
13:52:4010 identified to me as an R.J. Reynolds employee who
13:52:4011 smoked, yes, sir.

13:52:4012 Q Do you know how many of the top executives
13:52:4213 of R.J. Reynolds Tobacco Company in 1981 were smokers?

13:52:5014 A No, sir.

13:53:0015 Q Were any of the models who were involved in
13:53:0816 Winston campaigns during the time period that you were
13:53:1017 involved in Winston campaigns smokers other than
13:53:1418 yourself?

13:53:1419 A I believe there was two others over the
13:53:1620 six-and-a-half, seven-year period.

13:53:1821 Q And do you recall who they were?

13:53:2422 A Cortland Litz, and I believe Corbin Bernson
13:53:2823 smoked somewhat during the shoots but was not a
13:53:3224 regular smoker.

13:53:3225 Q Were they people that you regarded as among

13:53:38 1 the young?

13:53:40 2 A Yes, sir.

13:53:42 3 Q What would you say their ages were?

13:53:50 4 A I believe they were -- Corbin was 28 at the
13:54:00 5 time. And I'm not sure how old Cortland was.

13:54:02 6 Q Would you estimate that he was older than
13:54:02 7 21?

13:54:02 8 A Yes, sir.

13:54:04 9 Q Do you know whether smoking rates in the
13:54:40 10 United States are higher among whites or among blacks?

13:54:46 11 MS. FLOWERS: Object to the extent that it
13:54:46 12 calls for expertise.

13:54:52 13 MR. NIMS: I'm well aware that he's not
13:54:52 14 being offered as an expert. I'm only asking if
13:54:56 15 he knows the answer to that fact question.

13:55:00 16 THE WITNESS: No, I don't.

17 BY MR. NIMS:

13:55:22 18 Q If I could redirect your attention back to
13:55:26 19 paragraph 1 of the complaint where we started half an
13:55:30 20 hour ago, have you had any other conversation other
13:55:38 21 than the ones you've now testified to that you had
13:55:44 22 with Mr. Zane that you believe are relevant to the
13:55:48 23 allegations in paragraph 1?

13:55:52 24 MS. FLOWERS: I just want to object to the
13:55:52 25 form of the question again. And simply because

13:55:54 1 there is so much in paragraph 1 I believe it's
13:55:58 2 compound.

13:56:04 3 THE WITNESS: Yes.

4 BY MR. NIMS:

13:56:04 5 Q Okay. Well, first, let's see if we can
13:56:10 6 define the universe. As you read paragraph 1, how
13:56:20 7 many other conversations come to mind that you believe
13:56:22 8 are relevant to the allegations in that paragraph?

13:56:30 9 A I don't have any idea how many
13:56:30 10 conversations. I would have to take a break and think
13:56:34 11 of them in my head. I know there were more than five,
13:56:42 12 but I would be mistaken if I said I know the total
13:56:44 13 number as it applies directly to this paragraph
13:56:50 14 without studying the paragraph.

13:56:50 15 Q Well, let's at least start with those that
13:56:54 16 you presently can recall and that you believe are
13:56:56 17 relevant to the allegations in that paragraph.

13:57:00 18 What's the first conversation other than
13:57:04 19 those we've already talked about that you can recall
13:57:08 20 that you believe is relevant to the allegations in
13:57:10 21 that paragraph.

13:57:12 22 MS. FLOWERS: Let me just lodge a continuing
13:57:14 23 objection so I don't have to continue
13:57:16 24 interrupting you to the compound nature of
13:57:18 25 paragraph 1.

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13:57:20 1 MR. NIMS: Sure.

13:57:22 2 MS. FLOWERS: Go ahead.

13:57:22 3 THE WITNESS: It is my belief when I was

13:57:26 4 told that my job was to be a live version of a

13:57:30 5 GI Joe action figure to emulate ruggedness,

13:57:44 6 machismo, that it was directly related to getting

13:57:48 7 teenage boys smoking.

13:57:58 8 While being directed in the shoots, loud

13:58:04 9 music would be played, Apocalypse Now, helicopter

13:58:08 10 sound effects. I would be directed to recall

13:58:12 11 what it's like being a 12-, 13- or 14-year-old

13:58:14 12 boy playing GI Joe.

13:58:22 13 Another conversation was --

13:58:24 14 MR. NIMS: Before we go to another one,

13:58:28 15 let's stick with this one, then.

13:58:32 16 THE WITNESS: Excuse me. I need to use the

13:58:32 17 restroom.

13:58:34 18 MR. NIMS: Sure.

13:58:34 19 (A brief recess was taken.)

20 BY MR. NIMS:

14:05:12 21 Q All right. Mr. Goerlitz, before we took the

14:05:14 22 brief break, you had indicated that you recalled a

14:05:22 23 conversation or conversations -- I wasn't sure

14:05:24 24 which -- in which you were instructed to be a GI Joe

14:05:30 25 action figure to emulate ruggedness, to think like a

14:05:34 1 12- or 13-year-old boy. Was this a particular
14:05:40 2 conversation that you're recalling?

14:05:44 3 A It was several conversations.

14:05:46 4 Q And were all of the conversations with a
14:05:50 5 particular person or were they with different people?

14:05:52 6 A Different people.

14:05:54 7 Q Okay. Could you tell me the first person
14:05:58 8 you believe you had a conversation with involving any
14:06:02 9 of these general themes that you just mentioned?

14:06:0810 A I cannot recall who said what, when.

14:06:1211 Q Do you recall the names of any of the people
14:06:1612 who you believe were communicating these concepts to
13 you?

14:06:1814 A Yes, sir.

14:06:2015 Q And who were they?

14:06:2016 A Amele Dospenso, your favorite. Michael
14:06:3217 Rynhardt. On another occasion, a different
14:06:3618 photographer Dick Duranz (phonetic), John Neil. I
14:06:5219 don't recall if it was the gentleman in Utah or not.
14:06:5420 I don't know his name, a different employee on a
14:06:5821 different shoot, so I'm not quite sure. But I recall
14:07:0422 him being there. And who said what, my memory is not
14:07:0823 that good.

14:07:0824 Q Let me cover him for just a minute. Did you
14:07:1225 have any understanding when you first met this

14:07:16 1 gentleman in Utah as to what his employment was at
14:07:22 2 R.J.R.?

14:07:26 3 A He was introduced to me as a bigwig from
14:07:30 4 R.J. Reynolds. That's all I remember.

14:07:34 5 Q Was this occasion in Utah the only time you
14:07:40 6 met him?

14:07:40 7 A Yes, sir.

14:07:48 8 Q And do you recall anything that you
14:07:48 9 specifically believe he said on this occasion when you
14:07:52 10 met him?

14:07:54 11 A No, other than the conversation in general I
14:08:08 12 recall, but not specifically. Maybe I don't
14:08:10 13 understand the question, if it's relating to this or
14:08:14 14 just any general conversation.

14:08:16 15 Q Well, really both. If I've understood what
14:08:18 16 you've told me so far, there are kind of a series of
14:08:26 17 events that run together in your mind in which you
14:08:30 18 were told to be this GI Joe action figure and the
14:08:38 19 other things that you testified to. And correct me if
14:08:40 20 I'm wrong, but my understanding of what you've said is
14:08:48 21 that you don't specifically recall who said these
14:08:48 22 things.

14:08:50 23 But you remember in general their coming
14:08:54 24 from Rynhardt, Dospenso, another photographer Duranz,
14:09:02 25 and Neil. And then you said you didn't recall whether

14:09:04 1 the gentleman in Utah had said any of these things or
14:09:08 2 not; is that correct?

14:09:08 3 A That is correct.

14:09:10 4 Q And so, then my question was, Do you have
14:09:16 5 any specific recollection of anything that the
14:09:20 6 gentleman in Utah did say when you met him? And I
14:09:26 7 take it you only met him on one occasion.

14:09:26 8 A Yes, sir. He said he wanted my coat, my
14:09:32 9 leather jacket.

14:09:3610 Q Anything else you recall his saying?

14:09:3811 A More cordial, congratulations, market shares
14:09:4812 were going up, way to go Golden Boy, things of that
14:10:0013 nature, just friendly, supportive, rah-rah kind of
14:10:0214 cheerleading I would describe it, sir.

14:10:0415 Q I believe you indicated in your deposition a
14:10:1216 year ago that you believe the time period in which you
14:10:1417 were making Winston ads was roughly 1981 to 1987; is
18 that correct?

14:10:2219 A Roughly 1981 to 1987, that is correct.

14:10:2620 Q During that period of time did anybody tell
14:10:3221 you whether Winston's market share was going up or
14:10:3622 going down?

14:10:4023 A I was told it was going up.

14:10:4424 Q And do you recall who told you it was going
14:10:4625 up during 19 -- strike that.

14:10:48 1 Do you recall who told you it was going up?

14:10:52 2 A Yes, sir, I do.

14:10:56 3 Q And who told you it was going up?

14:10:56 4 A There were several people.

14:11:00 5 Q Do you recall any of who they were?

14:11:00 6 A Amele Dospenso, Larry Wassom, Joseph, I

14:11:08 7 believe his name to be the employee who was on the

14:11:18 8 Utah shoot. Several secretaries from the William Esty

14:11:20 9 office. That's about all I can recall, sir.

14:11:3010 Q Did you ever look at any actual market sales

14:11:4211 figures to determine whether or not Winston's share of

14:11:4812 the cigarette market was going up or going down during

14:11:5013 the period of time when you were involved with Winston

14:11:5414 ads?

14:11:5815 A No, sir.

14:11:5816 Q I take it it would be a surprise to you if,

14:12:1017 in fact, Winston's share of the cigarette market was

14:12:1418 declining during that six-year period?

14:12:1819 A Yes, it would surprise me.

14:12:2020 Q A few minutes ago you indicated that you

14:12:4621 could quickly call to mind maybe as many as five

14:12:5222 conversations that you believe were relevant to the

14:12:5623 allegations of paragraph 1. And then you told me

14:13:0424 about the series of conversations that you described

14:13:0625 having to do with the GI action figure. Were all five

14:13:14 1 of them of those same kind, or were there other
14:13:16 2 conversations that you believe were relevant to the
14:13:18 3 allegations of paragraph 1?

14:13:20 4 A There were other comments and discussions.

14:13:24 5 Q Okay. Would you tell me about the next
14:13:28 6 conversation you recall that you believe is relevant
14:13:30 7 to paragraph 1 of the complaint.

14:13:34 8 MS. FLOWERS: Can we please be specific
14:13:36 9 about which part of paragraph 1 we're talking
14:13:38 10 about?

14:13:40 11 MR. NIMS: Well, the person who can probably
14:13:42 12 provide the most specificity is the witness.

13 BY MR. NIMS:

14:13:46 14 Q Is there some part of paragraph 1 that you
14:13:52 15 specifically have in mind that you believe there were
14:13:54 16 conversations relevant to?

14:13:56 17 A Yes, sir.

14:13:56 18 Q And what part of paragraph 1 is that?

14:13:58 19 A Ignoring and suppressing the truth.

14:14:00 20 Q Okay. Is that the only part of paragraph 1
14:14:06 21 that you believe you were a part of conversations that
14:14:08 22 were relevant?

14:14:10 23 A No, sir.

14:14:10 24 Q What other --

14:14:10 25 A This is what I recall, as you asked.

14:14:14 1 Q Right. I understand. What other parts of
14:14:16 2 paragraph 1 do you believe you were involved in
14:14:20 3 conversations that are relevant?

14:14:28 4 A The mention of diseases, cancer, emphysema,
14:14:30 5 heart disease.

14:14:32 6 Q Any others?

14:14:32 7 A That would be all that I recall.

14:14:48 8 Q Well, let's talk first, then, about
14:14:52 9 conversations that you believe are relevant to the
14:14:58 10 allegations concerning suppressing the truth. Are
14:14:58 11 there other conversations that you can recall that you
14:15:06 12 believe are relevant to those particular allegations?

14:15:06 13 A Yes, sir.

14:15:06 14 Q Okay. Would you tell me the other
14:15:08 15 conversations that you can recall that you believe
14:15:12 16 have such relevance.

14:15:14 17 A As I recall, in Sedona, Arizona, we were
14:15:20 18 told that lots of money was going to go into a new or
14:15:24 19 a different brand account called Camel. They told me
14:15:36 20 that the shoots for Winston would be less frequent
14:15:44 21 because Smoking Joe, the new Camel character, was
14:15:52 22 being introduced, since Winston had gone from number 4
14:16:00 23 to number 2 in sales. Conversation went on to
14:16:08 24 describe what the new account would be for Camel and
14:16:14 25 how it would appear.

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14:16:18 1 The conversation went on to describe the
14:16:22 2 form of a cartoon character called Smoking Joe. I was
14:16:30 3 led to believe that that account had already been
14:16:36 4 story-boarded and approved by R.J. Reynolds to
14:16:42 5 reintroduce Camel brand in the form of a cartoon
14:16:44 6 character.

14:16:52 7 We discussed the fact that 4 to 5,000 kids
14:16:58 8 need to become smokers every day to replace those who
14:17:06 9 quit or die every day, which leads me now to believe
14:17:12 10 that they know that their product kills people.

14:17:24 11 Based on the conversation that I recall,
14:17:24 12 Smoking Joe, within two to three years, they hoped,
14:17:28 13 would be right behind Winston as the number 3 selling
14:17:34 14 cigarette, knowing that they would never surpass the
14:17:38 15 number 1 brand, Marlboro. And as I stated, I believe
14:17:52 16 this was in Sedona, Arizona, which was somewhere
14:17:54 17 around 1986.

14:17:56 18 Q All of what you've just told me about,
14:18:00 19 Sedona, Arizona, you recall as occurring in one
14:18:08 20 setting and what we'll call one conversation?

14:18:10 21 A That was one conversation, yes, sir.

14:18:12 22 Q Who was present at this conversation in
14:18:18 23 Sedona, Arizona?

14:18:24 24 A I believe there was five or six people, Dave
14:18:26 25 Stevens or John Martin. And I qualify that because we

14:18:38 1 worked in teams. And I'm not sure who my team member
14:18:42 2 was at that time. I do know Cortland Litz was there.
14:18:50 3 Again, my memory may be a little off. Michael
14:19:04 4 Rynhardt. And Doc, he replaced Amele Dospenso.
14:19:10 5 Aren't you pleased?

14:19:12 6 Q I like Doc.

14:19:14 7 A And I did make a mistake in my earlier
14:19:18 8 testimony, as I recall.

14:19:20 9 Q And what was that?

14:19:24 10 A When I said Michael Rynhardt was on the
14:19:28 11 first shoot with Dale Zane, it was not Michael
14:19:30 12 Rynhardt; it was Dick Duranz. Dick Duranz was the
14:19:36 13 photographer on the first three shoots. Michael
14:19:42 14 Rynhardt came in on the fourth shoot, I believe. I
14:19:42 15 apologize.

14:19:54 16 Q Okay. Now, you indicate that in this
14:19:56 17 Sedona-Arizona conversation you believe either Dave
14:20:02 18 Stevens or John Martin were there. Were they other
14:20:06 19 models?

14:20:06 20 A They were other models, yes, sir.

14:20:08 21 Q And who was Mr. Litz?

14:20:12 22 A Cortland Litz was another model who I
14:20:12 23 believe was there. I cannot recall from 16 years ago,
14:20:18 24 because there were several people who came and went
14:20:20 25 after I started. It was not the same team for the

14:20:24 1 entire six-year period.

14:20:26 2 Q And Mr. Rynhardt, you've indicated, was a
14:20:30 3 photographer?

14:20:30 4 A He was the photographer on that
5 Sedona-Arizona shoot, yes, sir.

14:20:34 6 Q Was the photographer an independent
14:20:38 7 contractor, or did you understand that he was an
14:20:38 8 employee of the advertising agency?

14:20:40 9 A I don't have any idea.

14:20:42 10 Q You have no idea who employed him?

14:20:42 11 A No, sir.

14:20:44 12 Q And then Doc, I take it, had become -- since
14:20:52 13 he replaced Mr. Dospenso, he was an advertising agency
14:20:54 14 employee?

14:20:54 15 A Yes, he was.

14:20:56 16 Q Was there anybody in Sedona, Arizona, in
14:20:58 17 this conversation that you believed to be employed by
14:21:02 18 R.J. Reynolds?

14:21:04 19 A I don't recall.

14:21:06 20 Q Who was the person in Sedona, Arizona, that
14:21:16 21 you believe apparently thought they knew something
14:21:18 22 about the Camel campaign?

14:21:20 23 A John Neil and Doc.

14:21:32 24 Q And Neil was also an employee of the
14:21:34 25 advertising agency?

14:21:36 1 A Yes, sir.

14:21:36 2 Q Did you ever discuss any aspect of Camel
14:22:04 3 advertising with anyone that you believed to be
14:22:06 4 employed by R.J. Reynolds?

14:22:10 5 A Not that I recall, other than my impression
14:22:14 6 was the ad agency was R.J. Reynolds in as much as
14:22:20 7 being told what to do and how to do it, in my
14:22:24 8 definition of employment.

14:22:36 9 Q But that was your assumption, I take it?

14:22:36 10 A Yes, sir.

14:22:36 11 MS. FLOWERS: Object to the form.

12 BY MR. NIMS:

14:22:42 13 Q You were never involved yourself in the
14:22:48 14 Camel advertising campaign, were you?

14:22:48 15 A No, sir.

14:23:08 16 Q Have you told me everything you can recall
14:23:10 17 being said by anyone who was a participant in the
14:23:16 18 conversation in Sedona, Arizona, which you believe is
14:23:20 19 relevant to the suppress-the-truth allegations of
14:23:26 20 paragraph 1 of the complaint?

14:23:30 21 A That's all I recall of that particular
14:23:30 22 instance, sir.

14:23:36 23 Q Who said that R.J. Reynolds would never
14:23:48 24 surpass Marlboro as the number 1 selling cigarette?

14:23:58 25 MS. FLOWERS: Object to the form. I mean,

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14:23:58 1 ever, or at the Sedona meeting?

14:24:02 2 MR. NIMS: At the Sedona meeting.

14:24:04 3 MS. FLOWERS: Thank you.

14:24:04 4 THE WITNESS: I believe it was John Neil.

5 BY MR. NIMS:

14:24:08 6 Q Did Mr. Neil say why he believed that would
14:24:10 7 be the case?

14:24:12 8 A There was a conversation because someone
14:24:16 9 asked why that would be the case, yes, sir.

14:24:20 10 Q And what, if anything, do you recall
14:24:20 11 Mr. Neil saying about why R.J. Reynolds would never be
14:24:26 12 able to surpass Marlboro?

14:24:28 13 A Because I believe -- I was told in a group,
14:24:36 14 not me specifically, that Phillip Morris had more
14:24:40 15 money for that one particular brand than R.J. Reynolds
14:24:44 16 had for Winston because they were more broadened.

14:24:48 17 They had Winston, Salem, Camel and other
18 R.J. Reynolds' brands, that they were not going to put
14:24:58 19 all of their eggs in one basket or something along
14:25:02 20 those lines which is why the Winston funds would be
14:25:04 21 less in advertising in their budget, moving to Camel.

14:25:12 22 And it was a general conversation like that, sir.

14:25:14 23 And he said, Well, we don't have the money
14:25:22 24 that Phillip Morris has to put into their product, as
14:25:22 25 I recall. Something like that.

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14:25:24 1 Q I believe in your earlier deposition you
14:25:28 2 indicated that during the years that you were a smoker
14:25:30 3 you were a Marlboro smoker?

14:25:34 4 A I would say that the majority of the
14:25:40 5 cigarettes I smoked were Marlboro, yes, sir. I did
14:25:42 6 smoke other brands, but my brand loyalty for many
14:25:46 7 years was Marlboro, yes, sir.

14:25:50 8 Q Why did you prefer Marlboro to other brands?

14:25:56 9 A Because it made me feel macho and
14:25:58 10 independent and tough and rugged as the advertisements
14:26:00 11 portrayed.

14:26:00 12 Q So while you're flying around in a
14:26:02 13 helicopter for a Winston ad, you're smoking a Marlboro
14:26:08 14 to feel rugged?

14:26:08 15 A That's false, sir. While I was flying
14:26:12 16 around I was smoking Winstons.

14:26:16 17 Q Did you prefer the flavor of Marlboro to the
14:26:18 18 flavor of Winston?

14:26:24 19 MS. FLOWERS: Objection. Relevance. Go
14:26:26 20 ahead and answer.

14:26:30 21 THE WITNESS: I had no pleasure out of
14:26:34 22 either. I have no taste of food, so I got no
14:26:38 23 flavor from Winstons or Marlboros.

24 BY MR. NIMS:

14:26:52 25 Q Why is it that you have no sense of taste?

14:26:56 1 Is that a medical problem of some sort?

14:26:58 2 A I had a stroke in 1984, sir.

14:27:02 3 Q Prior to 1984 did you have what you assumed

14:27:04 4 to be a normal sense of taste?

14:27:06 5 A Yes, sir.

14:27:06 6 Q And you had been smoking Marlboro for some

14:27:10 7 period of time prior to 1984?

14:27:12 8 A Yes, sir.

14:27:16 9 Q In fact, for many years prior to 1984?

14:27:16 10 A Yes, sir.

14:27:18 11 Q During those years did you prefer the flavor

14:27:22 12 of Marlboro to the flavor of other cigarettes you

14:27:24 13 tried?

14:27:24 14 MS. FLOWERS: Objection. Relevance.

14:27:26 15 THE WITNESS: I was smoking the image, not

14:27:30 16 the product, sir.

17 BY MR. NIMS:

14:27:32 18 Q So you would have smoked Marlboro regardless

14:27:34 19 of how any other cigarette tasted?

14:27:36 20 A Personally?

14:27:38 21 MS. FLOWERS: Object to form.

22 BY MR. NIMS:

14:27:40 23 Q Yes, personally, you.

14:27:44 24 A I would have smoked Marlboro, yes, sir.

14:27:48 25 Q Did you believe they were doing a better job

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14:27:52 1 of creating a rugged, macho image than Winston was?

14:27:58 2 A When I was smoking Marlboro they did not

14:28:06 3 have my campaign prior to my becoming a Winston model.

14:28:08 4 Q Which happened in 1981?

14:28:10 5 A 1981, yes, sir. Prior to that it was a

14:28:14 6 different campaign.

14:28:14 7 Q And you continued to smoke Marlboro through

14:28:18 8 1981 through 1982 through 1983, correct?

14:28:20 9 MS. FLOWERS: Object to the form.

14:28:24 10 THE WITNESS: I would smoke whatever was

14:28:26 11 available. I would take cigarettes home from my

14:28:28 12 shoots. So that's not true.

13 BY MR. NIMS:

14:28:30 14 Q But your preferred cigarette, you've told

14:28:34 15 me, was Marlboro?

14:28:34 16 A That is correct.

14:28:36 17 Q And you've told me you preferred it because

14:28:38 18 of the image.

14:28:38 19 A Plus I was a creature of habit. It's easier

14:28:44 20 when you're asking for three packs of cigarettes

14:28:46 21 daily, it's easier to say "Marlboro" because that's

14:28:50 22 what I smoked.

14:28:52 23 Q How old were you in 1983? 33?

14:28:58 24 A Yes, sir.

14:29:08 25 Q And at the age of 33 you're telling me that

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14:29:14 1 you were still a real fan of the rugged image that
14:29:16 2 Marlboro had created?

14:29:16 3 MS. FLOWERS: Object to the form of the
14:29:20 4 question and the characterization of the witness'
14:29:20 5 testimony.

14:29:24 6 THE WITNESS: May I answer it?

14:29:26 7 MS. FLOWERS: Yes.

14:29:28 8 THE WITNESS: I don't -- would you repeat
14:29:30 9 the question, sir?

14:29:40 10 MR. NIMS: Sure. Would you read it back.

11 (A portion of the record was read by the
12 reporter.)

14:29:42 13 THE WITNESS: Yes, sir.

14 BY MR. NIMS:

14:29:58 15 Q Okay. Were there any other conversations
14:30:00 16 that you can recall that you believe are relevant to
14:30:04 17 the allegations in paragraph 1 respecting suppressing
14:30:10 18 the truth other than those that you've now told me
14:30:14 19 about today?

14:30:18 20 A I cannot recall any others.

14:30:22 21 Q Now, you also indicated that you had some
14:30:28 22 belief that you had had conversations that were
14:30:32 23 relevant to the allegations of paragraph 1 as they
14:30:36 24 related to some of the diseases; is that correct?

14:30:40 25 A Yes, sir.

14:30:42 1 Q Would you tell me what conversations you
14:30:44 2 were part of that you believe are relevant to those
14:30:46 3 allegations in paragraph 1 of the complaint?

14:30:52 4 A Conversations that I had with other models
14:30:58 5 with regard to why they didn't smoke and I did, why I
14:31:12 6 was a better smoker in print than they were. And they
14:31:16 7 did not smoke themselves because of the cancer and the
14:31:16 8 emphysema scare. Conversations that I recall with
14:31:24 9 Billy Kendall who did not know how to hold a cigarette
14:31:3010 but had the image and the visual facial image that
14:31:3611 would entice boys to smoke or young would-be macho
14:31:4412 children. He said he would never smoke -- ever smoke,
14:31:4613 but for money, it's amazing what you do regardless of
14:31:5414 what tobacco is alleged -- has alleged caused in
14:32:0015 people's lives. Something along that line.

14:32:0416 Q And just before we move past him, he was
14:32:0617 another model?

14:32:0818 A He was another model, yes. And this was
14:32:1019 said in front of the art director, Amele Dospenso.

14:32:1820 Q And were there any other conversations that
14:32:2221 you were a part of that you believe are relevant to
14:32:2622 the allegations in paragraph 1 respecting diseases?

14:32:3623 A On one occasion I believe they were talking
14:32:4024 about what was better for you, tobacco or marijuana.
14:32:5025 And it was agreed upon that marijuana was safer

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14:32:52 1 because it didn't cause horrible cancers, something
14:32:58 2 like that, yes, sir.

14:33:04 3 Q This conversation that compared tobacco to
14:33:06 4 marijuana, where did that take place?

14:33:14 5 A It was on the way back from a shoot, I
14:33:14 6 believe, in the van or the bus, RV, whatever it was we
14:33:20 7 were in. I don't remember. Relaxed.

14:33:26 8 Q Was there anyone in the van, if that's where
14:33:28 9 it in fact took place, that you believed to be an
14:33:32 10 employee of R.J. Reynolds?

14:33:34 11 MS. FLOWERS: Object to the form of the
14:33:34 12 question.

14:33:36 13 THE WITNESS: I don't recall who was there.

14 BY MR. NIMS:

14:33:36 15 Q Who do you specifically recall expressing
14:33:44 16 the opinion that marijuana was safer?

14:33:44 17 A Corbin Bernson or Cortland Litz. It's a
14:33:58 18 toss-up between those two. I'm not sure.

14:34:00 19 Q And they were both, I believe you've already
14:34:06 20 identified, models?

14:34:06 21 A Yes, sir.

14:34:06 22 Q Did you express any opinion on the relative
14:34:26 23 safety of tobacco versus marijuana?

14:34:28 24 A No, sir, I didn't.

14:34:30 25 Q Are there any other conversations that you

14:34:42 1 were part of that you believe are relevant to the
14:34:44 2 allegations of paragraph 1 respecting diseases?

14:34:48 3 A I cannot recall at this point how it would
14:34:58 4 tie in with this first paragraph. So the answer is
14:35:00 5 no, sir.

14:35:06 6 Q So just to hopefully close out paragraph 1,
14:35:06 7 have you told me today all of the conversations that
14:35:12 8 you were part of that you believe are relevant to any
14:35:14 9 aspect of the allegations of paragraph 1 of the
14:35:18 10 complaint?

14:35:20 11 MS. FLOWERS: Object to the form.

14:35:20 12 THE WITNESS: I believe I've told you as
14:35:22 13 much as I can recall at this point, yes, sir.

14 BY MR. NIMS:

14:35:26 15 Q Let me just try and put in one place some
14:35:44 16 things to make sure that I have them clearly. You've
14:35:50 17 indicated that at one point in time in Colorado you
14:35:58 18 had conversations with a gentleman you believe to be
14:36:08 19 named Dale Zane who was identified to you as a
14:36:08 20 marketing director of R.J.R. Tobacco, correct?

14:36:16 21 A Yes, marketing director or marketing
14:36:18 22 executive. I could be wrong in my verbiage there.

14:36:22 23 But yes, one of those. I would say close.

14:36:26 24 Q And you've also told me about somebody that
14:36:28 25 you met one time in Utah that you understood only that

14:36:36 1 he was a bigwig, but you believed that he was employed
14:36:38 2 by R.J. Reynolds; is that correct?

14:36:40 3 A That is correct.

14:36:42 4 Q At any time during the six years that you
14:36:50 5 were working on Winston ad campaigns, did you meet
14:36:52 6 anyone else that you believed to be employed by
14:36:56 7 R.J. Reynolds?

14:36:58 8 MS. FLOWERS: Wait. Objection. Are you
14:37:00 9 speaking of R.J. Reynolds Tobacco Company
14:37:0210 itself?

14:37:0411 MR. NIMS: Any portion of R.J. Reynolds,
14:37:0812 whether the tobacco company or the larger
14:37:1213 corporation.

14:37:1414 MS. FLOWERS: Nabisco or its agents?

14:37:1615 MR. NIMS: Right -- well, agents we'd
14:37:1816 probably fight about. But somebody that you
14:37:2017 understood to be employed by R.J. Reynolds
14:37:2218 Corporation.

14:37:2419 THE WITNESS: Yes, sir.

20 BY MR. NIMS:

14:37:2621 Q Whether the tobacco company or some other
14:37:2822 part of R.J. Reynolds Corporation.

14:37:3023 A Yes.

14:37:3024 Q Other than the two that we've talked about,
14:37:3225 who else did you meet?

14:37:40 1 A A gentleman in Juneau, Alaska. Do not know
14:37:48 2 his name.

14:37:50 3 Q And when did you meet him?

14:37:54 4 A On the shoot in Juneau, Alaska.

14:37:58 5 Q Do you recall anything about when that was
14:38:00 6 in between 1981 and 1987?

14:38:02 7 A No, sir. I know it was in May. But I don't
14:38:06 8 know what year. I would have to look back on my notes
14:38:08 9 or records.

14:38:0810 Q And this gentleman whose name you don't
14:38:1211 remember, why do you believe that he was an employee
14:38:1612 in some fashion of R.J. Reynolds?

14:38:2013 A Because he was introduced to us as an
14:38:2414 employee of R.J. Reynolds at dinner in Juneau.

14:38:3215 Q And who introduced him?

14:38:3416 A Don't remember.

14:38:4017 Q Do you recall who besides this gentleman and
14:38:4418 you was present at this dinner in Juneau?

14:38:4819 A I believe it would be all of us, crew,
14:38:5020 talent, photographers. It exceeds 20 people. So,
14:38:5821 yes, I would recall. But I couldn't give you all
14:39:0222 their names. I have photographs.

14:39:0423 Q Do you have a photograph of this person?

14:39:0824 A I have a photograph of the crew on that
14:39:1225 particular shoot.

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14:39:14 1 Q But does the photograph include this person
14:39:16 2 that you believe to have been an employee of
3 R.J. Reynolds?

14:39:18 4 A I believe it does, yes, sir.

14:39:20 5 Q Could you make that available to your
14:39:24 6 counsel so she could provide it to me?

14:39:28 7 A I would be happy to.

14:39:28 8 Q And I certainly don't want to have another
14:39:36 9 deposition. If in fact you find the photo and if in
14:39:36 10 fact you believe it does contain the picture of this
14:39:38 11 person, can you indicate to your counsel which person
14:39:44 12 in the photo is the person?

14:39:44 13 A I believe I could do that, yes.

14:39:46 14 MR. NIMS: We would request that he look and
14:39:50 15 see if he can find that photo and that if he
14:39:50 16 does, identify such person. Could you provide us
14:39:56 17 with the photo?

14:39:56 18 MS. FLOWERS: Certainly. We'd be happy to
14:39:58 19 do that. If you could help us identify the
14:40:00 20 person, that would be appreciated. And if you
14:40:02 21 have any follow-up questions for Mr. Goerlitz,
14:40:08 22 perhaps we could do it over the phone.

14:40:10 23 MR. NIMS: That would be great.

24 BY MR. NIMS:

14:40:12 25 Q Now, when he was identified to you, do you

14:40:12 1 recall what position he held at R.J. Reynolds?

14:40:16 2 A No, I don't.

14:40:18 3 Q Did you meet him only on this one occasion

14:40:24 4 at dinner in Juneau?

14:40:26 5 A I met him through the next day as well, yes.

14:40:32 6 Q One shoot in Juneau?

14:40:34 7 A Yes, that was the only time.

14:40:44 8 Q Did he say anything during the course of

14:40:44 9 time you were with him that you recall?

14:40:4610 A Referring to what, sir?

14:40:5011 Q Just anything.

14:40:5412 A Yes, sir.

14:40:5413 Q What do you recall his having said?

14:40:5614 A Do you want to smoke some weed?

14:41:0815 Q Did he direct that specifically to you or to

14:41:0816 a larger group?

14:41:1017 A To a larger group.

14:41:1218 Q And do you recall anything else that this

14:41:1819 gentleman said?

14:41:2220 A No, sir, not to me.

14:41:2821 Q Did this gentleman in fact produce some

14:41:3022 marijuana?

14:41:3223 By produce, I mean take out of his pocket or

14:41:3424 something while you observed him.

14:41:3625 A To the best of my ability, yes, he did.

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14:41:50 1 Q And did anybody else in the group take
14:41:54 2 marijuana from him?

14:41:54 3 A Yes, they did.

14:42:06 4 Q And did you take any marijuana from him?

14:42:06 5 A No, I did not.

14:42:06 6 Q How many other people do you recall having
14:42:16 7 shared marijuana with him?

14:42:20 8 A Possibly two or three.

14:42:26 9 Q Did he say anything at all about cigarettes
14:42:30 10 or tobacco that you recall during the time you were
14:42:32 11 with him in Juneau?

14:42:34 12 A I don't recall.

14:42:56 13 Q Did you ever discuss with anybody your
14:43:02 14 reaction to somebody showing up at one of your shoots
14:43:04 15 and making marijuana available?

14:43:10 16 A At the time I believed it was cool, which is
14:43:24 17 what prompted our conversation about marijuana versus
14:43:28 18 tobacco.

14:43:42 19 Q So the conversation you told me about
14:43:44 20 earlier in a van on the way back from a shoot was on
14:43:50 21 the way back from the Juneau shoot?

14:43:50 22 A It's possible.

14:44:16 23 Q Have you told me all you can recall this
14:44:18 24 gentleman having said that you heard while he was with
14:44:24 25 you in Juneau?

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14:44:26 1 A No, sir.

14:44:28 2 Q Okay. What else can you remember?

14:44:32 3 A I do know that there was other substances
14:44:40 4 around the shoot location, meaning illegal
14:44:40 5 substances. I was led to believe it was cocaine.
14:44:50 6 Whether or not he produced it -- I know that he was
14:44:52 7 involved in the conversations with several people.
14:45:02 8 Other than discussion of drugs, that's about all I
14:45:08 9 recall about this gentleman.

14:45:1010 Q And you have no recollection of what you may
14:45:1411 have understood his title to be?

14:45:1812 A No recollection whatsoever.

14:45:3013 Q What was the reason for the photograph that
14:45:3414 you believe you have of this group being together?

14:45:4015 A On many occasions -- I believe we had 11, 12
14:45:4816 or 13 shoots. And we would always have a wrap party
14:45:5617 where we would celebrate a job well done, as we do in
14:45:5818 a lot of entertaining industries. So some of the
14:46:0619 shoots we would have a group shot; others we didn't.
14:46:1220 It depended on the day's activity, when we were
14:46:1621 leaving, and things like that. But some locations we
14:46:1822 did have group photos. But they didn't always include
14:46:2223 executives because they weren't there the whole time.
14:46:2424 They would show up and leave, and come back, things
14:46:2825 like that. He just happened to be in this one photo,

14:46:32 1 as I recall.

14:46:32 2 Q The other two people that you've identified
14:46:36 3 as being people you believe to have been employed by
14:46:38 4 R.J. Reynolds, Mr. Dale Zane and the gentleman in
14:46:44 5 Utah, do you have any recollection as to whether you
14:46:48 6 have photos that you believe include them?

14:46:52 7 A I do not have photos including them.

14:47:14 8 May I take a break?

14:47:20 9 MR. NIMS: Sure.

14:52:1410 (A brief recess was taken.)

11 BY MR. NIMS:

14:52:1412 Q You indicated when you were deposed earlier
14:52:1813 that you had one conversation with somebody at
14:52:2614 Reynolds in 1988 when you called to inquire about the
14:52:3015 possibility of either doing further work for Reynolds
14:52:3416 or for Phillip Morris. Do you recall that
14:52:3817 conversation in your deposition?

14:52:4018 MS. FLOWERS: Object. I would like to know
14:52:4419 which deposition we're talking about. Steve
14:52:4420 Sheller's deposition?

14:52:4621 MR. NIMS: Yes. The one that was taken in
14:52:4822 August last year.

14:52:4823 MS. FLOWERS: Okay. I don't want to keep
14:52:5224 interrupting on that deposition. But I want to
14:52:5425 lodge a continuing objection to the relevance of

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14:52:56 1 that deposition as to the relevance of this
14:52:56 2 case.

14:52:58 3 But answer the question, please.

14:52:58 4 THE WITNESS: I recall a conversation, yes.

5 BY MR. NIMS:

14:53:02 6 Q And as best you can recall, was that
14:53:02 7 conversation accurately characterized in your earlier
14:53:06 8 testimony?

14:53:10 9 MS. FLOWERS: Again, I'm going to have to
14:53:1010 object. Perhaps if we could show him.

14:53:1411 MR. NIMS: Sure. If he would like to
14:53:1612 read --

14:53:1613 MS. FLOWERS: Or if you could tell him,
14:53:2014 refresh his recollection.

14:53:2215 THE WITNESS: If I could see it, it might
14:53:2416 refresh my memory.

14:53:2417 MR. NIMS: I'm just trying to avoid being
14:53:2818 redundant and repetitive.

14:53:3219 THE WITNESS: It was an awful lot to read.
14:53:3420 And I'm not sure if I skimmed.

14:53:5621 MR. NIMS: By my notes, it's page 144 and
14:53:5822 145 --

14:54:5423 MS. FLOWERS: Are we correct that it stops
14:54:5624 at --

14:54:5825 MR. NIMS: No, it goes on up until about

14:55:02 1 150.

14:55:22 2 MS. FLOWERS: Why don't you rephrase the
14:55:24 3 question, and perhaps we can cut through some of
14:55:28 4 this. Are you simply asking him if this is still
14:55:30 5 his testimony on this issue?

14:55:32 6 MR. NIMS: Yes. I think it's still useful
14:55:34 7 if he'll take the time to read up to about 150.
14:55:38 8 And I'll see if there's anything you would
14:55:42 9 change. I just get annoyed in this litigation
14:55:44 10 when the same people get deposed time after time
14:55:48 11 and get asked the same questions they've already
14:55:50 12 been asked.

14:55:52 13 MS. FLOWERS: I do get annoyed too. But I'm
14:55:54 14 always cautious when we're dealing with class
14:55:56 15 action addiction cases.

14:55:58 16 MR. NIMS: I understand. We have to know
14:56:02 17 that what he's agreeing is correctly stated.

14:56:06 18 THE WITNESS: And I will tell you why --

14:56:08 19 MR. NIMS: Just a second. Are we on the
14:56:10 20 record? Okay.

14:56:14 21 MS. FLOWERS: Have you finished reading it
14:56:16 22 yet?

14:56:16 23 THE WITNESS: I knew which part I needed to
14:56:18 24 clarify in my head.

25 BY MR. NIMS:

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14:56:34 1 Q Mr. Goerlitz, have you had an opportunity to
14:56:38 2 review your testimony from your deposition a year ago
14:56:38 3 from pages 144 through 150?

14:56:46 4 A Yes, sir.

14:56:46 5 MS. FLOWERS: Same objection.

6 BY MR. NIMS:

14:56:48 7 Q And does that testimony that you gave at
14:56:56 8 that time correctly characterize what you can recall
14:56:58 9 of the conversation you had in July of 1988 with a
14:57:0210 representative of R.J. Reynolds?

14:57:0411 A Yes, sir.

14:57:0612 Q Have you had any conversation with anyone
14:57:1213 you understood to be an employee of R.J. Reynolds
14:57:1614 since that conversation in July of 1988?

14:57:2615 A Since that conversation in 1988?

14:57:2816 Q Correct.

14:57:2817 A No, I have not.

14:57:3218 Q So that's the last time you talked, so far
14:57:3219 as you know, to anyone who was employed by Reynolds?

14:57:3820 A As far as I recall, yes, with one exception.

14:57:4421 Q Okay. What's the one exception?

14:57:4622 A Stopping by the R.J. Reynolds facility in
14:57:4823 Winston-Salem, North Carolina, just to say hello,
14:57:5624 nothing specific about work or employment.

14:57:5625 Q And you just talked to somebody sitting

14:58:00 1 behind the desk and said you were just stopping by?

14:58:04 2 It was a receptionist or somebody?

14:58:06 3 A Receptionist, secretary, I'm not even sure
14:58:08 4 when it was. So I wouldn't want you to believe that I
14:58:12 5 had no other conversations.

14:58:16 6 Q And when you stopped by, other than saying
14:58:16 7 hi to the receptionist, you had no substantive
14:58:20 8 conversation with any R.J. Reynolds' employee?

14:58:24 9 A I had no substantive conversations with
14:58:26 10 anyone, right.

14:58:40 11 Q Other than being deposed, which has now
14:58:42 12 happened twice, have you ever had any conversation
14:58:44 13 with any attorney that you understood to be employed
14:58:50 14 by a tobacco company?

14:58:54 15 A Employed by a tobacco company? I believe a
14:59:08 16 conversation I had with someone who claimed to be a
14:59:10 17 lobbyist for Phillip Morris was also an attorney as
14:59:14 18 well. I believe. I could be wrong in that. But I
14:59:20 19 believe he also said he was an attorney.

14:59:22 20 Q And was that the conversation you testified
14:59:24 21 about in your prior deposition where somebody from
14:59:30 22 Phillip Morris indicated maybe you could do some
14:59:32 23 lobbying for them?

14:59:34 24 A That is correct.

14:59:36 25 Q Do you have any further recollection of that

14:59:40 1 conversation that you didn't testify to last year?

14:59:44 2 A No, sir.

14:59:44 3 Q Did you ever have any discussion with any --
15:00:12 4 strike that.

15:00:14 5 Other than the conversation that you had
15:00:14 6 with this one gentleman who may have been an attorney
15:00:20 7 and lobbyist for Phillip Morris, did you ever have any
15:00:24 8 discussion with someone you understood to be employed
15:00:26 9 by a tobacco company other than R.J. Reynolds?

15:00:3210 A May I clarify?

15:00:3411 Q Yes.

15:00:3612 A Prior to or after?

15:00:3813 Q Ever.

15:00:3814 A Yes, sir.

15:00:4015 Q Okay. What conversations have you had with
15:00:4416 people that you believe to have been employed by other
15:00:4617 tobacco companies?

15:00:5018 A Gentleman by the name of Walker Merryman
15:00:5419 from The Tobacco Institute; Ms. Brennan Dawson Moran,
15:01:0620 also of The Tobacco Institute, as I recall; two or
15:01:1821 three PR people from The Tobacco Institute, and I
15:01:2022 cannot recall their names.

15:01:2623 Q And did all of these conversations occur at
15:01:2824 one time or did they occur at different times?

15:01:3025 A Different times.

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15:01:30 1 Q What's the first time you can recall having
15:01:34 2 conversations with people you understood to be
15:01:36 3 employed by The Tobacco Institute?

15:01:44 4 A After I came out against the tobacco
15:01:44 5 industry in November of 1988.

15:01:50 6 Q Okay. And do you recall approximately when
15:01:54 7 you had the first conversation with someone that you
15:01:58 8 understood to be employed by The Tobacco Institute?

15:02:02 9 A I would believe within 60 days, three
15:02:08 10 months, maybe, 60 to 90 days after.

15:02:10 11 Q And what was the nature of the conversation
15:02:14 12 at that time, and with whom did you have it at that
15:02:18 13 time?

15:02:18 14 A It was with Walker Merryman. And it was in
15:02:22 15 a radio debate on air, live.

15:02:26 16 Q Did you ever have private conversations with
15:02:34 17 any representative of the tobacco company other than
15:02:38 18 in a public debate kind of setting?

15:02:40 19 A No private discussions, no, sir.

15:02:42 20 Q So other than those public debates with
15:02:52 21 representatives of The Tobacco Institute and the one
15:02:58 22 conversation you've told us about with the lawyer
15:03:00 23 lobbyist for Phillip Morris, did you have any other
15:03:04 24 conversations with people that you believed to be
15:03:08 25 employees of tobacco companies other than

15:03:10 1 R.J. Reynolds?

15:03:10 2 A Yes, sir.

15:03:12 3 Q What were they?

15:03:12 4 A I met an R.J. Reynolds employee at the
15:03:18 5 William Esty Advertising Agency in New York City who
15:03:26 6 introduced himself as some marketing rep, discussed
15:03:46 7 with me who he was and why he was there because I was
15:03:50 8 there at the same time.

15:03:52 9 Q And this was while you were still involved
15:03:54 10 in the Winston campaign?

15:03:56 11 A Yes, sir.

15:03:56 12 Q And do you recall his name?

15:04:18 13 A No, I don't.

15:04:22 14 Q He was a different person, though, than the
15:04:26 15 person you had met in Juneau and the person you had
15:04:26 16 met in Utah?

15:04:34 17 A Yes, sir.

15:04:34 18 Q And do you recall anything that he said when
15:04:52 19 you met him in New York City?

15:04:54 20 A Yes, sir.

15:04:54 21 Q And what do you recall his having said?

15:04:56 22 A He was explaining to me how they market the
15:05:04 23 photographs that their ad agency and photographers
15:05:14 24 took. He tried to explain to me the process of how
15:05:18 25 and why I was so good at my job, because I tested well

15:05:28 1 in focus groups -- didn't know what they were really.

15:05:38 2 So he just explained what focus groups were.

15:05:44 3 They showed me the photographs that they

15:05:48 4 were picking for the next series of ads to be run.

15:05:52 5 And he explained how the process works with children

15:05:58 6 associating smoking with healthy activity in high-risk

15:06:06 7 behavior -- high-risk activities, I should say, that

15:06:14 8 macho kind of thing.

15:06:14 9 Macho was thrown around an awful lot, where

15:06:22 10 I would jump off the helicopter and repel to keep

15:06:24 11 reinforcing that smoking was a healthy activity.

15:06:34 12 That's not an opinion. That was expressed because

15:06:36 13 that's what worked in focus groups in marketing

15:06:38 14 strategies, and how color was so crucial. That's why

15:06:44 15 the blue sky was so perfect with my blue eyes because

15:06:50 16 it tested well with women. It tested well that we

15:06:58 17 appeared like other actors, being a stand-in for

15:07:08 18 Harrison Ford; I resembled him. Cortland Litz

15:07:14 19 resembled Tom Selleck. Dave Stevens certainly

15:07:18 20 resembled Robert Redford in that kind of a discussion

15:07:26 21 of why and how the campaign can move to a greater

15:07:28 22 height of market-sharing.

15:07:34 23 He discussed with me how they tested in

15:07:38 24 malls with children. But that was primarily for color

15:07:44 25 identification, to test what colors worked better in

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15:07:50 1 demographics. And I'm not saying that I know all
15:07:52 2 about demographics, but I was a part of a conversation
15:07:58 3 to where children are at a steering wheel pressing
15:08:02 4 buttons or pedals, whatever --

15:08:04 5 I forget what he said. That when they see a
15:08:10 6 color or a billboard, press a button. The machine
15:08:18 7 would, in turn, tally how many seconds the eye is on
15:08:18 8 the focus of things of this nature. And it always
15:08:24 9 related to children, with the exception of the women
15:08:28 10 in the focus groups. Never adults or grown-up, old
15:08:32 11 people. Women or children. That was the conversation
15:08:36 12 at the William Esty office while we were selecting our
15:08:40 13 macho GI Joe action shots on glaciers, doing heroic
15:08:46 14 activity, to keep impressing that this is how kids
15:08:50 15 could be like if they smoked their particular brand.

15:08:54 16 Q Were you ever present when photographs of
15:09:00 17 you were shown to any kind of a focus group?

15:09:00 18 A I was never present.

15:09:04 19 Q Were you ever present when photographs of
15:09:06 20 any Winston model were shown to a focus group?

15:09:16 21 A By definition of a focus group I'd be
15:09:16 22 guessing because my photographs were seen by lots of
15:09:20 23 people in the decision-making process at the ad agency
15:09:24 24 hired by R.J. Reynolds. And I was there for that.
15:09:28 25 But whether they would be considered experts in their

15:09:32 1 focus agenda, I don't know, if you follow what I'm
15:09:36 2 saying. They were shown to lots of people that I was
15:09:40 3 in front of.

15:09:40 4 Q As best you can recall, exactly what do you
15:09:44 5 believe this person said about focus groups?

15:09:46 6 A I recall that without them, they wouldn't
15:09:56 7 know which pictures to choose because of the number of
15:10:02 8 shots that were shot during a four- or five- or
15:10:06 9 six-day period. And the number thrown out to me was
15:10:10 10 thirty-six to thirty-seven thousand pictures to choose
15:10:14 11 from.

15:10:16 12 Q Anything else you can recall this person
15:10:18 13 having said about focus groups?

15:10:20 14 A That I favored well in most of them, which
15:10:28 15 is why I was their blue-eyed Golden Boy, things like
15:10:32 16 that. But other than that, nothing really specific
15:10:32 17 that I can recall at this point.

15:10:38 18 Q Do you recall his having said anything about
15:10:42 19 how the people who participated in focus groups were
15:10:46 20 selected?

15:10:48 21 A No, I don't recall.

15:11:00 22 Q Was there anybody present other than this
15:11:12 23 gentleman and yourself when this conversation
15:11:14 24 occurred?

15:11:18 25 A I believe there were an art director, Doc;

15:11:28 1 possibly his assistant, Peter; a couple clerical
15:11:34 2 people.

15:11:40 3 Q Did this conversation occur at the ad
15:11:42 4 agency?

15:11:42 5 A Yes, sir, in Doc's office, I assume --
15:11:50 6 Beg your pardon. I assumed it was Doc's
15:11:52 7 office because there were slides all over.

15:11:54 8 Q Did you ever talk with any representative of
15:12:00 9 the advertising agency about how the focus groups were
15:12:04 10 selected?

15:12:08 11 MS. FLOWERS: Objection. Asked and
15:12:08 12 answered. Go ahead.

15:12:10 13 THE WITNESS: I may have during the
15:12:12 14 conversation after he left as to how else I
15:12:20 15 can -- what else can I do to be numero uno or
15:12:24 16 number 1 in their selection process because of my
15:12:26 17 own greed.

18 BY MR. NIMS:

15:12:30 19 Q Do you have any recollection of ever having
15:12:36 20 discussed how focus groups were chosen with any
15:12:36 21 representative of the advertising agency?

15:12:38 22 A In general, there was conversations where I
15:12:40 23 was privy to what was being said. But I don't believe
15:12:44 24 it was being directed at me other than in the general
15:12:52 25 mood of conversation. Conversations were directed at

15:12:52 1 me when I specifically asked, What else can I do to
15:12:58 2 get more ads sold, to get more kids to smoke?

15:13:00 3 Q Do you recall anybody at the ad agency ever
15:13:04 4 saying anything that you heard about how participants
15:13:08 5 in the focus groups were selected?

15:13:16 6 A I believe that I've already answered that,
15:13:20 7 that they choose women who might be attracted to a
15:13:22 8 specific type of a young man or older man and how kids
15:13:28 9 are part of that focus group in malls because that's
15:13:32 10 where kids hang out, something like that.

15:13:38 11 I can't remember specifics other than
15:13:38 12 broad-based generalities here, sir.

15:13:40 13 Q Do you believe somebody said that they have
15:13:46 14 focus groups with kids that they show pictures of you
15:13:48 15 to?

15:13:52 16 MS. FLOWERS: Object to the form and the
15:13:52 17 characterization of the witness' testimony.

15:13:56 18 THE WITNESS: They told me that they had
15:13:58 19 machines for kids to choose color; they have kids
15:14:04 20 to choose distances; that they have a scene of a
15:14:06 21 particular color and how long it's in their
15:14:08 22 head. But there was never any conversation where
15:14:12 23 my picture was shown to a child, possibly to a
15:14:16 24 young woman.

25 BY MR. NIMS:

15:14:16 1 Q I mean, you would be astonished, would you
15:14:20 2 not, if any tobacco company were trying to get a focus
15:14:24 3 group of kids and showing your picture to it?

15:14:26 4 A Sure, I would be astonished at that; but
15:14:30 5 not, as I testified, that it was mostly with color and
15:14:32 6 with the blue skies and things like that which is why
15:14:36 7 I think I've answered the question to the best of my
15:14:38 8 ability.

15:14:40 9 Q Did you ever see one of these machines in a
15:14:46 10 mall that were used to see how kids react to color?

15:14:48 11 A I've never seen one, no.

15:14:50 12 Q Anybody ever identify for you a single mall
15:15:00 13 anywhere in the United States where such a machine was
15:15:02 14 placed by a tobacco company to see how kids react to
15:15:06 15 the color?

15:15:06 16 A No one gave me a specific location, no, sir;
15:15:12 17 nor did I ask.

15:15:14 18 Q The Winston campaigns that you participated
15:16:06 19 in, did you ever find out where your pictures were
15:16:12 20 actually used, where the ads appeared?

15:16:16 21 A Yes, sir.

15:16:18 22 Q And what did you find out in that regard?

15:16:20 23 A They were running all over where allowed.
15:16:30 24 They were next to candy on the display stands with my
15:16:36 25 picture. I'm talking about the cigarettes themselves

15:16:40 1 were next to the candy with my picture. They were on
15:16:44 2 push/pull door stickers at children's eye level when
15:16:48 3 you go in and out of the stores. They appeared on
15:16:50 4 clocks. They appeared on vending machines, every
15:16:56 5 possible major magazine that would attract youth.

15:17:02 6 Q Identify for me all the magazines that you
15:17:08 7 believe your picture appeared in Winston ads in that
15:17:08 8 magazine.

15:17:10 9 A Rolling Stones, Motor Trend, Outdoor Life,
15:17:30 10 Playboy, Penthouse, Life, Time, Newsweek, Cycling,
15:17:54 11 Cycles World -- Cycler World, something like that,
15:18:00 12 Sports Illustrated, Popular Mechanics, a few women's
15:18:10 13 magazines that I cannot recall, billboards, sports
15:18:28 14 stadiums in the form of computerized generated
15:18:34 15 visuals, taxicabs, entries and exits of subways, in
15:18:58 16 subways, billboards in every part of the country with
15:19:04 17 the exception of the minority areas, meaning the
15:19:10 18 projects, ghetto, if you will, any place where white
15:19:18 19 Americans reside, some African American, but they --
15:19:26 20 it was minimal with my picture. That's all I recall.
15:19:32 21 I'm sure there was others.

15:19:46 22 Q Okay. Do you have firsthand knowledge of
15:19:54 23 anywhere that an ad with your picture appeared in the
15:20:00 24 State of Oklahoma?

15:20:02 25 MS. FLOWERS: Objection. Asked and

15:20:02 1 answered.

15:20:04 2 THE WITNESS: Yes.

3 BY MR. NIMS:

15:20:04 4 Q And what firsthand knowledge do you have of
15:20:08 5 it appearing in a location in Oklahoma?

15:20:12 6 A I just saw it.

15:20:16 7 Q I'm sorry. I don't understand. What do you
15:20:20 8 mean you just saw it? You were in Oklahoma and saw
15:20:22 9 it?

15:20:24 10 A Yes, sir.

15:20:26 11 Q Where did you see and what did you see in
15:20:26 12 Oklahoma?

15:20:28 13 A My picture in a vending machine in a bowling
15:20:34 14 alley two weeks ago.

15:20:42 15 Q A picture, I take it, that was taken over
15:20:50 16 ten years ago?

15:20:52 17 A Yes, sir.

15:20:52 18 Q You saw one of your old pictures on a
15:20:56 19 vending machine in a bowling alley in Oklahoma two
15:21:00 20 weeks ago?

15:21:00 21 A Yes, sir.

15:21:00 22 Q And where was that bowling alley?

15:21:04 23 A Somewhere in Oklahoma.

15:21:06 24 Q You don't remember the city?

15:21:08 25 A I believe it was Enid. But I could be

15:21:12 1 wrong. I traveled to nine cities in a week.

15:21:18 2 Q Do you have any other firsthand knowledge of
15:21:22 3 where your picture appeared in the State of Oklahoma?

15:21:24 4 MS. FLOWERS: Same objection.

15:21:30 5 THE WITNESS: Firsthand?

6 BY MR. NIMS:

15:21:32 7 Q Yes.

15:21:34 8 A No.

15:21:34 9 Q Do you have any other non-firsthand
15:21:38 10 knowledge but information that you were told about
15:21:42 11 where your picture appeared in the State of Oklahoma?

15:21:44 12 A Yes, sir.

15:21:46 13 Q What information do you have that you were
15:21:48 14 told about that?

15:21:50 15 A I was recognizable in the State of Oklahoma
15:21:54 16 when I did a press conference in governor's rally on
15:22:02 17 the State of Oklahoma steps last year in 1988 -- in
15:22:08 18 1998? Excuse me. '97. Where am I? It was last
15:22:16 19 year.

15:22:16 20 Q I want to make sure I understand how it
15:22:20 21 relates to your belief about where your ad ran in
15:22:24 22 Oklahoma. You did a governor's rally last year
15:22:28 23 somewhere in Oklahoma, I take it?

15:22:32 24 A In Oklahoma City.

15:22:32 25 Q And this was some kind of an antitobacco

15:22:36 1 rally, I assume?

15:22:40 2 A It was pro health, children making good
15:22:42 3 choices.

15:22:42 4 Q And what was your role in it?

15:22:44 5 A As a new role model for children.

15:22:52 6 Q I mean, did you make some kind of a speech?

15:22:54 7 A Yes, sir.

15:22:54 8 Q And while you were at this rally something
15:23:02 9 happened, I take it, that gives you reason to believe
15:23:06 10 that ads with your face appeared in Oklahoma. And
15:23:10 11 what happened that causes you to believe that?

15:23:14 12 A People came up and said that we recognize
15:23:18 13 you from your ads that you did with Winston.

15:23:30 14 Q Anything else?

15:23:38 15 A Anything else happened or any firsthand
15:23:40 16 knowledge?

15:23:42 17 Q Well, if there's any other firsthand
15:23:42 18 knowledge, I certainly want to know about it.

15:23:46 19 A No. I haven't seen anything more than what
15:23:48 20 I've already told you, I believe.

15:24:10 21 Q What is the age in Oklahoma, if you know, at
15:24:12 22 which people are allowed to legally purchase
15:24:16 23 cigarettes?

15:24:16 24 MS. FLOWERS: Objection. Beyond the scope
15:24:22 25 of the witness' expertise. Go ahead and answer.

15:24:24 1 THE WITNESS: 18 legally.

2 BY MR. NIMS:

15:24:40 3 Q Do you believe that ads with your picture
15:24:46 4 appeared in any magazine in Oklahoma, the principal
15:24:52 5 readership for which were individuals younger than the
15:24:56 6 age of 18?

15:24:56 7 MS. FLOWERS: Objection. Asked and
15:24:56 8 answered:

15:25:00 9 THE WITNESS: I wouldn't have any idea. I
15:25:0210 would assume. But I wouldn't confirm.

11 BY MR. NIMS:

15:25:0412 Q Well, let me ask, are there any magazines
15:25:0813 that you are aware of the principal readership of
15:25:1614 which are individuals below the age of 18?

15:25:1615 MS. FLOWERS: Asked and answered.

15:25:1816 THE WITNESS: Yes, sir.

17 BY MR. NIMS:

15:25:1818 Q And what magazines are those?

15:25:2019 A Probably Rolling Stones and Playboy and
15:25:2620 Penthouse.

15:25:3021 Q What is the basis for your belief that those
15:25:3222 three magazines have their principal readership among
15:25:3623 people younger than the age of 18?

15:25:3824 MS. FLOWERS: I'm going to have to object
15:25:4025 because this witness already stated he's not an

15:25:46 1 expert in demographics and certainly not being
15:25:46 2 offered on magazine readership.

15:25:50 3 With that said, give him what you know.

15:25:52 4 MR. NIMS: I'm not asking merely for his
15:25:54 5 opinion. I'm merely asking for why he believes
15:25:56 6 his ads appeared in magazines, the principal
15:26:00 7 readership of which are people under 18. And so
15:26:02 8 I want to know the basis for his belief that
15:26:08 9 those three magazines fit that profile.

15:26:1010 MS. FLOWERS: I think that that was your
15:26:1011 characterization of what magazines had the
15:26:1812 readership and that he was just giving a guess.

15:26:2613 You can go ahead and continue to guess
15:26:2614 unless you have some substantive knowledge about
15:26:2815 it.

15:26:3016 THE WITNESS: To answer your question, I was
15:26:3017 under the age 18 once; and those are the three
15:26:3418 that I rallied up to. Or something like
15:26:4019 rolling -- it's just an opinion, sir. Maybe I
15:26:4620 don't understand the scope of your question
15:26:4621 either.

22 BY MR. NIMS:

15:27:0223 Q I think we've probably covered this, but let
15:27:0624 me make sure. Other than in magazines which may have
15:27:1425 been distributed in Oklahoma and a vending machine in

15:27:20 1 a bowling alley which has an old picture of you still
15:27:28 2 on it in Enid, are there any other places where you
15:27:28 3 know that your picture in a Winston ad appeared in the
15:27:34 4 State of Oklahoma?

15:27:36 5 A No.

15:27:36 6 MS. FLOWERS: Hold on. You're going to have
15:27:38 7 to give me time to lodge objections, please. If
15:27:42 8 I could assert one. Object to the
15:27:46 9 characterization of the witness' testimony. I
15:27:46 10 believe he gave a long list of national types of
15:27:48 11 advertisement.

12 BY MR. NIMS:

15:28:34 13 Q During the period in which you were modeling
15:28:40 14 for Winston ads, were you provided at any time with
15:28:46 15 any documents that you understood came from
16 R.J. Reynolds Company?

15:28:52 17 This is during that period of time, not what
15:28:54 18 you may have gotten later since you have become a
15:29:02 19 public spokesperson; but during that period of time,
15:29:06 20 did you get any documents from R.J. Reynolds?

15:29:12 21 A Other than my contract with R.J. Reynolds,
15:29:12 22 no.

15:29:12 23 Q You weren't on any distribution list of any
15:29:18 24 kind where you received any kind of marketing material
15:29:20 25 or advertising material?

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15:29:24 1 A Distribution list, I don't understand.

15:29:26 2 Q A list of people within R.J. Reynolds who

15:29:30 3 were getting advertising marketing type documents, if

15:29:36 4 there was such a distribution list, you weren't on it,

15:29:38 5 I take it?

15:29:38 6 A If there was a list, I wasn't on it, no.

15:30:32 7 Q As of when you were deposed last year, you

15:30:32 8 identified yourself as an ex-smoker who lapsed every

15:30:38 9 now and then. How would you identify yourself today?

15:30:46 10 Have you totally quit smoking today?

15:30:46 11 A I have lapsed.

15:30:50 12 Q How often do you lapse?

15:30:50 13 A It varies. Maybe once every three, four or

15:30:56 14 five months depending upon certain factors.

15:31:00 15 Q And when you lapse, do you have a cigarette,

15:31:04 16 or do you for some period of time start smoking

15:31:08 17 regularly?

15:31:10 18 A I have a drag or a couple hits maybe, but

15:31:16 19 no, I do not go back to regular smoking.

15:31:28 20 Q Since you quit smoking back in I believe it

15:31:30 21 was 1988 -- does that sound correct?

15:31:36 22 A That's correct.

15:31:36 23 Q Since you quit smoking back then, has there

15:31:40 24 ever been a day on which you smoked more than a single

15:31:44 25 cigarette?

15:31:44 1 A Oh, certainly, yes, sir.
15:31:46 2 Q And how often has that occurred?
15:31:48 3 A Ten times, twelve times possibly. I don't
15:31:56 4 really know. Not to my -- I know it's ten to twelve.
15:32:08 5 Q Is there any brand today that you use when
15:32:10 6 you occasionally lapse?
15:32:18 7 A No specific brand. It's usually OP's.
15:32:50 8 MR. NIMS: Why don't we take five minutes,
15:32:52 9 and I'll see if I've covered everything I want to
15:41:54 10 cover.

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13 (At 2:41 p.m. the deposition was adjourned.)

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1 STATE OF FLORIDA
2 COUNTY OF PALM BEACH

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6 I, Mary R. Desiderio, the undersigned Notary
7 Public, in and for the State of Florida, hereby
8 certify that DAVID GOERLITZ personally appeared before
9 me and was duly sworn.

10

11

12

13 WITNESS my hand and official seal this 29th
14 day of November, 1998.

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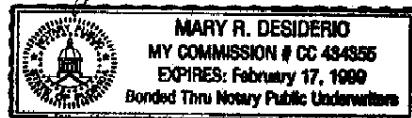
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1 C E R T I F I C A T E

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3 STATE OF FLORIDA
4 COUNTY OF PALM BEACH

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6 I, Mary R. Desiderio, Registered Professional
7 Reporter, do hereby certify that I was authorized to
8 and did stenographically report the foregoing
9 deposition; and that the transcript is a true and
10 correct transcription of the testimony given by the
11 witness.

12

13 I further certify that I am not a relative,
14 employee, attorney or counsel of any of the parties,
15 nor am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am
17 I financially interested in the action.

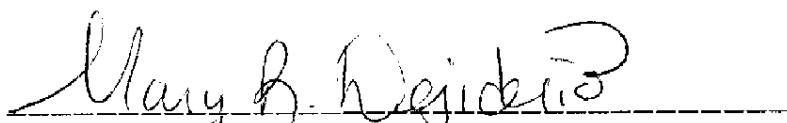
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20 Dated this 29th day of November, 1998.

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Mary R. Desiderio

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Registered Professional Reporter

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2 C E R T I F I C A T E

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STATE OF FLORIDA

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COUNTY OF PALM BEACH

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7 I, DAVID GOERLITZ, hereby certify that I have
8 read the foregoing transcript of my deposition and
9 that the statements contained therein, together with
any additions or corrections made on the attached
Errata Sheet, are true and correct.

10 Dated this _____ day of _____, 1998.

11

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15 The foregoing certificate was subscribed to
16 before me this _____ day of _____, 1998, by the
witness who has produced a _____ as
identification and who did not take an additional
oath.

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Notary Public

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